



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[EPA-R09-OAR-2021-0018; FRL-10024-15-Region 9]

Rescission of the Source-Specific Federal Implementation Plan for Navajo Generating Station, Navajo Nation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to rescind the federal implementation plan (FIP) that regulates emissions from the Navajo Generating Station (NGS), a coal-fired power plant that was located on the reservation lands of the Navajo Nation near Page, Arizona. NGS permanently ceased operations on November 18, 2019, and the Clean Air Act operating permit for this facility has expired.

DATES: This rule will be effective on **[Insert date 30 days after date of publication in the *Federal Register*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0018. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region IX, (415) 972-3958,

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SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Background

On March 16, 2021, the EPA proposed to rescind the FIP for NGS that we promulgated on October 3, 1991 (“1991 FIP”), March 5, 2010 (“2010 FIP”), and August 8, 2014 (“2014 FIP”).¹ The provisions of the 1991 action are codified in the Code of Federal Regulations (CFR) at 40 CFR 52.145(d), the provisions of the 2010 action are codified at 40 CFR 49.5513(a) through (i), and provisions of the 2014 action are codified at 40 CFR 49.5513(j). We refer collectively to the provisions from the 1991, 2010, and 2014 actions as the “FIP” or the “NGS FIP.” The NGS FIP includes federally enforceable emissions limitations that apply to the fossil fuel-fired steam generating equipment, designated as Units 1, 2, and 3, equipment associated with the coal and ash handling, and the two auxiliary steam boilers at NGS. These emissions limitations apply to emissions of particulate matter (PM), opacity, sulfur dioxide (SO₂), and oxides of nitrogen (NO_x). The EPA is proposing to rescind the NGS FIP and remove the provisions of the FIP from 40 CFR 52.145(d) and 40 CFR 49.5513.

NGS was a coal-fired power plant that ceased operation in 2019, located on the reservation lands of the Navajo Nation, just east of Page, Arizona, and approximately 135 miles north of Flagstaff. NGS was co-owned by several entities and operated by Salt River Project

¹ The EPA’s proposed rule is available at 86 FR 14392 (March 16, 2021). The provisions of the FIP for NGS were published at 56 FR 50172 (October 3, 1991), 75 FR 10174 (March 5, 2010), and 79 FR 46552 (August 8, 2014).

Agricultural Improvement and Power District (SRP).² The facility consisted of three electric generating units, each with a capacity of 750 megawatts (MW) net generation, with a total capacity of 2250 MW. Operations at the facility produced air pollutant emissions, including emissions of SO₂, NO_x, and PM. Pollution control equipment at NGS included wet flue gas desulfurization units for SO₂ and PM removal, electrostatic precipitators for PM removal, and low-NO_x burners with separated over-fire air to reduce NO_x formation during the combustion process. Had the facility not ceased operations, the owner or operator of NGS would have taken additional steps by December 31, 2019 to reduce emissions of NO_x, pursuant to the requirements of the 2014 FIP.

The EPA's proposed action published on March 16, 2021 described the EPA's authority to promulgate a FIP in Indian country, provided an historical overview of the NGS FIP actions, and described the EPA's basis for our proposed action to rescind the NGS FIP, including consideration of whether the rescission of the FIP would interfere with any Clean Air Act requirements. Briefly, because NGS has permanently ceased operation and all equipment subject to the NGS FIP is no longer operational, and because the facility no longer holds a valid CAA title V permit to operate, the EPA proposed to rescind the FIP for NGS at 40 CFR 52.145(d) and 40 CFR 49.5513. Please see our proposed rule for additional details.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period that ended on April 15, 2021. During this period, the EPA received two comments, one from a private individual and the other from SRP, both in support of our proposed action to rescind the FIP for NGS.³ We are not providing responses to these comments because they express support for our proposed action.

² The original participants in NGS were the United States Bureau of Reclamation, SRP, Arizona Public Service Company, Tucson Electric Company, NV Energy, and the Los Angeles Department of Water and Power (LADWP). SRP, serves as the facility operator. Prior to the permanent closure of NGS, SRP acquired the LADWP participant share in NGS.

³ The comments are available in the docket for this rulemaking at <https://www.regulations.gov/document/EPA-R09-OAR-2021-0018-0001/comment>.

III. Final Action

For the reasons discussed in detail in the proposed rule and summarized herein, the EPA is taking final action to rescind the FIP for NGS at 40 CFR 52.145(d) and 40 CFR 49.5513.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review. This rule applies to only one facility and is therefore not a rule of general applicability.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. The Navajo Generating Station is located on the reservation lands of the Navajo Nation, and the EPA recognizes there has been significant community and tribal interest in this facility. The facility has already permanently ceased operations and this action simply rescinds previously promulgated requirements applicable to this shuttered facility. In addition, the Navajo Nation EPA has already determined that NGS no longer has the right to operate. This action to rescind the NGS FIP will not have substantial direct effects on any Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action. However, on January 7, 2021, we invited the Navajo Nation to consult on this proposed action.⁴ The Navajo Nation did not request consultation on this FIP rescission.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

⁴ Letter dated January 7, 2021 from Elizabeth J. Adams, EPA Region IX, to Jonathan Nez, President of the Navajo Nation, Re: Invitation to Consult on a Request from the Salt River Project to Rescind the Federal Implementation Plan for the Navajo Generating Station.

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. The facility has already permanently ceased operations and this action simply rescinds previously promulgated requirements applicable to this shuttered facility. Therefore, the EPA considers this action to have no impacts to human health and the environment, and to have no potential disproportionately high and adverse effects on minority, low-income, or indigenous populations.

K. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Visibility.

Michael S. Regan,
Administrator.

For reasons discussed in the preamble, EPA amends Chapter I, title 40, of the Code of Federal Regulations as follows:

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

SUBPART L—IMPLEMENTATION PLANS FOR TRIBES—REGION IX

§49.5513 [Removed and Reserved].

2. Remove and reserve §49.5513.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

3. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart D—Arizona

§ 52.145 [Amended]

4. Section 52.145 amended by removing and reserving paragraph (d).

[FR Doc. 2021-12574 Filed: 6/15/2021 8:45 am; Publication Date: 6/16/2021]